

## REMARKS

Claims 1-15 are pending in this application. As will be discussed below, independent claims 1, 13 and 14 have each been amended to make explicit subject matter that was already inherent in the claims. The amendments are not believed to narrow the scope of the claims, nor are the amendments required for purposes of patentability. After carefully reviewing the cited art and the comments provided in the Office Action, applicant submits that the claims are patentable over the cited art for reasons discussed in greater detail below. Reconsideration of the claims and allowance of the application is requested.

### Claims 1 and 3-13 Are Patentable Over Jain

Beginning on page 2 of the Office Action, Claims 1 and 3-13 were rejected under 35 U.S.C. § 102(e) as being anticipated by Jain (US 6,343,278). Applicant respectfully requests reconsideration.

The present application is directed to facilitating the trading of orders having a premium associated therewith. Premiums for the orders are offered or demanded relative to a current market price for the orders. The orders are automatically paired for trading in accordance with their respective premiums. See, e.g., page 15, lines 19-28 and page 33, lines 10-26 of the present application. See also, in particular, the detailed discussion at page 94, line 16 to page 96, line 15. A premium for an order is also referred to as the "aggressiveness" of the order. If the aggressiveness is a positive value, then the order is offering a premium relative to the market. If the aggressiveness is a negative value, then the order is demanding a premium relative to the market.

The foregoing concepts are further explained at page 95, lines 10-30 with respect to FIGURE 90, where "oU" refers to an "order umpire" that facilitates trading:

FIG. 90 is a flowchart showing match list aggressiveness processing. At step 2005, oU 30 initializes to the first pair of orders in its match list. At

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step 2010, using the liquidity curve specified by the respective order, and its matchable size, oU 30 determines the premium offered or demanded for each of the buy and sell sides. At step 2015, oU 30 classifies the order pair according to the buy and sell side premiums.

If the classification is that both sides are offering a premium, then at step 2020, oU 30 sets the match price to the market price, and marks the order pair as matchable.

If the classification is that the premium offered by the buy side is at least as large as the premium demanded by the sell side, then at step 2025, oU 30 sets the match price to the market price plus the sell side premium, and marks the order pair as matchable.

If the classification is that the premium offered by the buy side is less than the premium demanded by the sell side, then at step 2030, oU 30 marks the order pair as unmatchable.

If the classification is that the premium demanded by the buy side is smaller than or equal to the premium offered by the sell side, then at step 2035, oU 30 sets the match price to the market price less the buy side premium, and marks the order pair as matchable.

If the classification is that the premium demanded by the buy side is greater than the premium offered by the sell side, then at step 2040, oU 30 marks the order pair as unmatchable.

If the classification is that the buy side and the sell side are both demanding premiums, then at step 2045, oU 30 marks the order pair as unmatchable.

At step 2050, oU 30 checks whether there are more pairs in its match list; if so, processing returns to step 2010, and if not, processing is complete.

An example illustrating this processing is set forth at page 96, line 16 to page 99, line 5 of the present application.

Jain relates to an order facility that permits a trader to submit a group of related orders, particularly for derivatives based on an underlying currency or other commodity. See Col. 2, lines 1-4. The group of orders may be subject to a common order limit whereby all of the related

orders are automatically reduced whenever one such order is accepted. See Col. 2, lines 4-8, and Col. 9, lines 32-37. Once submitted, new orders are matched with outstanding orders in price/time priority. See Col. 3, lines 34-35.

In rejecting Claim 1, the Office Action referred to the Abstract and to Col. 8, lines 55+; Col. 1, lines 39-46; Col. 2, lines 4-13; and Col. 9, lines 20+ of Jain. Applicant has carefully considered each of these passages and finds noticeably absent any disclosure that suggests, much less anticipates, each and every element of Claim 1.

More specifically, Claim 1 of the present application calls for "automatically determining premiums offered or demanded for the orders in a batch at a particular price, wherein the premiums are determined relative to a current market price for the orders in the batch" and "automatically pairing the orders in accordance with their respective premiums." Claim 1 was amended to make explicit what the term "premiums" already meant in the context of the claim: that the premiums are determined relative to a current market price. This does not narrow the scope of Claim 1 because the claim already recited the term "premiums".

Jain fails to disclose or suggest anything relating to premiums offered or demanded for orders in a batch at a particular price. Consequently, Jain also fails to disclose or suggest the element of automatically pairing the orders in accordance with their respective premiums. As claimed, the premiums are determined relative to a current market price for the orders in the batch, which is nowhere taught by Jain.

Absent a disclosure of all the elements of Claim 1, the disclosure of Jain does not support a *prima facie* case of anticipation under Section 102. Claim 1 should be allowed.

Claims 3-13 are also patentable over Jain, both for their dependence on allowable Claim 1, and for the additional subject matter they recite that is not disclosed by Jain. Specifically, Jain fails to disclose, and thus does not anticipate the elements:

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- wherein determining premiums occurs when the orders in the batch are posted to the batch process, as recited in Claim 3.
- wherein automatically pairing includes giving preference to orders offering premiums, the preference being proportional to the size of the premium, as recited in Claim 4.
- wherein automatically pairing includes giving preference to orders demanding premiums, the preference being inversely proportional to the size of the premium, as recited in Claim 5.
- further comprising automatically setting the price for each pairing based on the premiums associated with the orders in the pairing, as recited in Claim 6.
- wherein each pairing includes a buy order and a sell order, and automatically setting sets the pairing price to a market price when both orders are offering a premium, as recited in Claim 7.
- wherein each pairing includes a buy order and a sell order and the buy order offer premium is at least the sell order demand premium, and automatically setting sets the pairing price to a market price plus the sell order premium, as recited in Claim 8.
- wherein each pairing includes a buy order and a sell order and the sell order offer premium is at least the buy order demand premium, and automatically setting sets the pairing price a market price less the buy order premium, as recited in Claim 9.
- wherein each pairing includes a buy order and a sell order, and automatically setting marks the pairing as unmatchable when the premiums indicate lack of a mutually acceptable price, as recited in Claim 10.

- wherein the premiums indicate lack of a mutually acceptable price when (i) the buy order demand premium is greater than the sell order offer premium, (ii) the sell order demand premium is greater than the buy order offer premium, or (iii) the buy order and the sell order are both demanding premiums, as recited in Claim 11.
- further comprising automatically adjusting the price for a pairing when one of the orders in the pairing is also participating in an unmatchable pairing, as recited in Claim 12.

Claim 13 calls for "automatically converting liquidity curves respectively associated with the orders into premiums offered or demanded for the orders relative to a current market price for the orders" and "automatically posting the orders with premiums to a batch process, the batch process for automatically pairing the orders in accordance with their respective premiums."

As discussed above, Jain fails to teach or suggest premiums offered or demanded for orders relative to a current market price for the orders. Consequently, Jain also fails to teach or suggest the element of automatically posting the orders with premiums to a batch process, the batch process for automatically pairing the orders in accordance with their respective premiums.

Additionally, notwithstanding the citation of Col. 8, lines 55+ in the Office Action, Jain fails to state anything about liquidity curves or converting liquidity curves respectively associated with the orders into premiums. In regard to Claim 14, discussed below, the Office Action (page 5) concedes the failure of Jain to disclose the element of determining premiums in accordance with respective liquidity curves associated with the orders. Again, absent a disclosure of all the elements of Claim 13, the disclosure of Jain does not support a *prima facie* case of anticipation under Section 102. Claim 13 should be allowed.

Claims 2, 14, and 15 Are Patentable Over Jain and Lupien

Beginning on page 5 of the Office Action, Claims 2, 14, and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jain in view of Lupien et al. (US 5,689,652) (hereinafter "Lupien"). Applicant respectfully requests reconsideration of these claims.

Claim 2 is dependent on Claim 1, and recites "wherein determining premiums occurs in accordance with respective liquidity curves associated with the orders in the batch." Claim 14 calls for "automatically selecting an order processing methodology wherein a premium offered or demanded for the order at a particular price relative to a current market price is automatically determined based on a liquidity curve and the order is automatically paired in accordance with its premium" and "automatically posting the order to a market operative according to the selected order processing methodology." These elements are not disclosed by Jain or Lupien.

Lupien teaches a crossing network that matches buy and sell orders according to satisfaction density profiles of the buyer and seller so that each trader is assured that the overall outcome maximizes the mutual satisfaction of all traders. See, e.g., the Abstract. Each satisfaction density profile characterizes a trader's degree of satisfaction with a transaction. For every buy/sell profile pair, a central matching computer (CMC) calculates a mutual satisfaction cross product. Trades are matched in order, starting with the highest value of mutual satisfaction. See Col. 4, lines 16-26.

While Lupien suggests that orders can be processed in batches, that is as close as Lupien gets to the elements of Claim 2. Applicant submits that Lupien fails to teach the element of automatically determining a premium offered or demanded for an order at a particular price relative to a current market value, much less a premium based on a liquidity curve, as in Claims 2 and 14. Lupien also does not teach a market that operates to automatically pair orders in accordance with determined premiums (whether over or under the current market price).

A *prima facie* case of obviousness requires references that, in a motivated combination, teach all the elements in the claims at issue as particularly arranged in the claims. For the reasons discussed above, neither Jain nor Lupien, alone or combined, teach all of the elements of Claims 2 and 14. Thus Claims 2 and 14 should be allowed.

Claim 15 depends from Claim 14 and incorporates all of the features that patentably distinguish Claim 14 over Jain and Lupien. Claim 15 also presents additional subject matter that is not taught or suggested by Jain or Lupien ("wherein the market determines the premium when the order is posted thereto"). Accordingly, Claim 15 is also patentable, both for its dependence on allowable Claim 14 and for the additional subject matter it recites.

#### CONCLUSION

Applicant submits that Claims 1-15 pending in the present application are all in condition for allowance. Issuance of a Notice of Allowance at an early date is requested. Should any issues remain needing resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

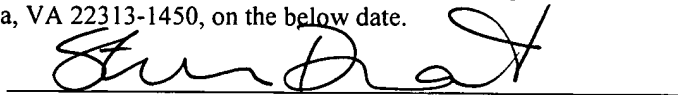
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